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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------------|------------------|
| 09/818,603  | 03/28/2001  | Toru Niki            | 35.C15232                  | 1892             |
| 5514  | 7590        | 10/31/2005           |                            |                  |
| FITZPATRICK CELLA HARPER & SCINTO<br>30 ROCKEFELLER PLAZA<br>NEW YORK, NY 10112 |             |                      | EXAMINER<br>POND, ROBERT M |                  |
|   |             |                      | ART UNIT                   | PAPER NUMBER     |
|   |             |                      | 3625                       |                  |

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/818,603

Applicant(s)

NIKI ET AL.

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.

Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 04 August 2005 has been entered.

### ***Response to Amendment***

The Applicant amended claims 1-7 and 10-16. All pending claims 1-7 and 10-18 were examined in this non-final office action.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7 and 10-16 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1-7 and 10-18 are rejected under 35 USC 103(a) as being unpatentable over Pallakoff (Paper #5, US 6,269,343) in view of Harney (PTO-892, Item: U, Proquest ID#49228274).**

Pallakoff teaches a system and method of a buying team comprising members of the team who participate in a given offer. Pallakoff further teaches:

- Receiving a request for the group purchase from a terminal having an ID; terminal receiving ID: Inherent in Pallakoff are the structures necessary to permit receiving a request for the group purchase from a terminal having an ID. For example, a user desiring to participate as at team members views a web page displaying a single group offer and selects web page button to join buying team (see at least Fig. 2 (21, 28); col. 3, line 37 through col. 4, line 12). The URL that displays the single group offer is uniquely associated with the offer and is associated with the terminal requesting the "Join Buying Team" button 28 as depicted in Figure 2. Inherent in Pallakoff are the structures necessary to permit the terminal to received an ID associated with a group offer. For example, the system

transmits a web page possessing a unique URL to the user terminal and displays a web page that is uniquely associated with a particular group offer via the URL.

- Notifying the terminal having the ID that request for the group purchase is received: after the user activate "Join Buying Team" button for a particular offer, the system responds by requesting billing and shipping info (if not previously registered) and will solicit quantity of product desired (see at least col. 4, lines 45-51); system updates web page to reflect "Aggregate Demand so Far" (see at least Fig. 2 (25); col. 3, line 66 through col. 4, line 6; col. 7, lines 31-46). Please note: the user who just joined will see his/her quantity added to aggregate demand.
- Storing a purchase state for satisfying a condition of the group purchase wherein the purchase state corresponds to the ID: system computer manipulates display field that shows aggregate demand which is the sum of all requested quantities for a particular group offer during an established time period (see at least Fig. 2 (25); col. 7, lines 31-35).
- Updating the purchase state: recalculates the aggregated demand and displays the aggregated demand to members (see at least Fig. 2 (25); col. 7, lines 31-46).
- Giving a special favor to the purchaser on the basis of the purchase state:
  - after passage of a time period included in the condition the special favor is given to the purchaser if the purchase state stored satisfies the

condition of the group purchase: based on time limit or aggregated demand greater than or equal to maximum available offer quantity, the group offer is concluded and special offer is determined (e.g. if 6-20 balls were sold then special offer is \$8.00 each instead of \$10.00 each; if 21-50 balls were sold then special offer is \$4.00 each instead of \$8.00) (see at least Fig. 3 (32, 35); col. 4, lines 20-36). Please note: reaching a particular threshold results in a special favor by the seller- a discount.

- special favor is not given to the purchaser if the purchase state does not satisfy the condition: special favor of \$4.00 per ball is not granted if 20 balls or fewer are sold (see at least Fig. 3 (32, 35); col. 4, lines 20-36).
- Purchase period: time period/ date limits established and displayed to members (see at least Fig. 2 (26); Fig. 3 (32); col. 4, lines 7-8; 65-67).
- Program: Inherent in Pallakoff are the structures necessary to permit the storage and execution of computer programs. For example, see detail program flow (see at least Fig. 6 (61-68); col. 7, lines 6-8).
- Making payment: members of buying team are charged for purchased product; receive invoices or pay via credit cards (see at least col. 8, lines 41-53).

- System means: means for electronically transmitting a group offer and ID to members of a buying group; means for electronically receiving ID information from group members; means for making payment.

Pallakoff teaches all the above as noted under the 103(a) rejection and teaches a) a system representing sellers, b) posting seller offers and aggregating buyers into one or more purchasing groups to leverage the buying potential of a buying group, c) providing a special favor to each member of the buying group in the form of a discounted price at the conclusion of a group buying cycle (limited by time or available quantity), and d) the entity operating the sales system receiving a commission from the seller. Pallakoff, however, does not disclose providing a rebate to each member of the buying group at the conclusion of the group buying cycle. Harney teaches affinity programs leveraging large-group buying power to produce discounts on various services or products for individual members of the group. Harney teaches participating real-estate brokers rebating a portion of their regular commissions to an affinity group sponsor company and the sponsor company passing on all or most of the rebate directly to the affinity group member that previously purchased goods (U: see at least pages 1 and 2). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Pallakoff to pass rebates to each individual member as taught by Harney, in order to further lower member cost in previously procured goods or services, and thereby attract member to the buying group service.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US 6,128,599 (Walker et al.) 03 October 2000; teaches group purchasing, determining aggregate group performance, and providing reward types including rebates.
- US 6,351,738 (Clark) 26 February 2002; teaches lowering the cost to members of a group purchasing program by passing rebates paid by vendors to members via the selling entity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Robert M. Pond', is positioned above the printed name.

Robert M. Pond  
Primary Examiner  
October 26, 2005